IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 315 OF 2001

Basheer Dastagir Shaikh ..... Appellant.

versus

The State of Maharashtra ..... Respondent.

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Mrs. Rachita Dhura advocate appointed for the appellant.
Mrs. P.H.Kantharia APP for State.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 25TH APRIL, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 26-03-1997 passed by the Additional Sessions Judge, Pune in Sessions Case No. 294 of 1994, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that on 14th July 1994 the accused strangulated his wife by means of a wire of cable and caused her death. A complaint was accordingly lodged. The accused was arrested and prosecuted. The accused denied the guilt. Prosecution has examined eight witnesses to prove its case and the learned trial Judge on appreciation of the evidence convicted the accused as aforesaid.

4. The learned advocate appearing on behalf of the accused contended that there were severe serious discrepancies in the evidence of two witnesses and they are not liable to be accepted as eye witnesses and therefore the judgment of conviction is unsustainable in law. According to the learned counsel, the prosecution has not proved that it was the accused who killed the deceased and there is no motive for so doing and there is therefore no reason why the accused should kill his wife to whom he was married only a couple of months earlier. These submissions were countered by the learned Prosecutor who pointed out that the entire evidence is cogent, adequate to sustain the order of conviction. The fact that the accused has committed the murder is proved beyond doubt and therefore there

is no reason to interfere with the order of conviction merely because there is no motive proved. The fact of murder is proved by clinching evidence. We have to appreciate there two rival contentions in the light of the evidence reappreciated by us.

5. P.w.1 Malhari is a panch witness to the recovery of the cable wire at the instance of the accused. He has identified the same in the court. P.w.2 Popat is a police officer who received the information about the death, went to the spot, found the dead body and sent it to Sasoon hospital. He has also prepared spot panchanama, which is proved as Exh.9.

6. P.w.3 is Dr. Vijay who examined the patient and found that the accused have taken his wife Rajiyabi the deceased, to Dr. Vijay and he found that there were ligature marks on both the wrist and on neck of the patient and the pulses were not recordable and therefore asked the accused to take the patient to Sasoon hospital. He is therefore the first witness who noticed the ligature marks on the neck of the victim and was unable to state whether at that time victim was alive or not.

7. P.w.4 is Imam Shaikh, who was a child of 13 years when the deposition was recorded. He has deposed that on 14th July 1994 he saw Rajiyabi the victim coming to home and saw the accused coming thereafter, and after about 15 minutes he went to his friend and later on learnt that his sister has died. He is therefore a witness who saw the accused and the victim last together.

8. Then is the deposition of P.w.5 Kausalya who saw the accused going into the house where the victim was already there. After an hour she heard a cry that Raziyabi has died. Then he saw the accused lifting the victim on his shoulder and took her to hospital. According to this witness therefore the accused entered the house around 6.30 p.m. and then after about an hour he cried that his wife has dead. He was therefore undoubtedly the last person who was with the victim in the house.

9. P.w.6 Kashinath is the person who repaired the television at the house of the accused and has left a piece of cable wire and he has identified the cable as the one which he has dropped in the house.

10. P.w.7 Dr. Milind is the doctor who conducted the post mortem and has proved that the victim died homicidal death. P.w.8 Subhash is the investigating officer who has recovered the cable wire used by the accused at the instance of the accused.

11. It will thus be seen that there is adequate evidence on record proving the presence of the accused at the site , recovery of the wire at the instance of the accused, death of the victim by strangulation, presence of the accused at the time when the body was discovered, the finding of the accused that she is dead and the fact that the accused herself took her to Dr. P.w.3, goes to prove beyond doubt that it was the accused and none else who strangulated the victim. It is true that the prosecution has not proved the motive but the evidence as led by the prosecution proves beyond doubt that the accused was the person who strangulated his wife whatever be the reason the offence was definitely committed by the accused. We therefore see no reason to interfere with the findings arrived at by the learned trial Judge on proper appreciation of evidence.

12. In this case the advocate was appointed for the defence of the accused as he had no means to do so. The advocate so appointed is therefore entitled to receive fees of Rs. 1000/-.

13. In the result therefore the appeal fails and it is dismissed.

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